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COMMISSION ON HUMAN RIGHTS

Fifty-first session

SUMMARY RECORD OF THE 25th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 15 February 1995, at 3 p.m.

Chairman:	Mr. BIN HITAM	(Malaysia)
later:	Mr. DOBREV (Vice-Chairman)	(Bulgaria)

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The meeting was called to order at 3.10 p.m.

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-SIXTH SESSION

(a) INDIGENOUS ISSUES

(agenda item 19) (continued) (E/CN.4/1995 - E/CN.4/Sub.2/1994/56; E/CN.4/1995/83, 119, 120 and 141; E/CN.4/Sub.2/1994/3, 33 and Corr.1, 35 and 41; E/CN.4/1995/NGO/12; E/CN.4/Sub.2/1991/55)

1. Mr. SOUALEM (Algeria) said that the wide-ranging report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/1995/2-E/CN.4/Sub.2/1994/56) was proof that that body faced a crisis of growth which, if no corrective measures were taken by the Commission, would divert the Sub-Commission from its original mandate and lead to the creation of what would virtually be a second commission on human rights. Despite the concern expressed in that regard by the Commission, the Sub-Commission continued to devote most of its efforts to the consideration of agenda item 6 and had clearly failed to rationalize its agenda and to elaborate more appropriate working methods. In that respect, the report of the Working Group on the methods of work of the Sub-Commission (E/CN.4/Sub.2/1994/3) had provided no conclusive response.

2. Pursuant to its original mandate, the Sub-Commission, through its special rapporteurs, had carried out numerous studies on various aspects of human rights and greater use should be made of the wealth of information contained therein. In that connection, the Secretariat should make available to the Sub-Commission and the Commission a comprehensive list of the studies undertaken to date in order to avoid duplication and to permit a more balanced analysis of the various human rights issues. The Sub-Commission appeared to place greater emphasis on civil and political rights and should take steps to ensure that its studies reflected a better balance among the various human rights.

3. On the same subject, it would be useful to know whether the Sub-Commission had the right to propose once again studies which had previously been denied approval by the Commission. His delegation noted, for example, that the Sub-Commission was again proposing a study on humanitarian assistance and human rights, despite Commission decision 1994/103 that it was unnecessary or premature to make any determination on such studies and that the Sub-Commission should establish priorities in its work.

4. His delegation also had doubts about the appropriateness of extending for two more years the mandate of the Special Rapporteur on traditional practices affecting the health of women and children. That question had already been the object of a study carried out 10 years previously, with the assistance of various specialized institutions. The launching of action and rehabilitation programmes by such institutions would be of much greater practical value. It should be noted, moreover, that the mandate of the Special Rapporteur had been extended the previous year by Commission decision 1994/104 so as to enable her

to submit to the Sub-Commission a plan of action for the elimination of harmful traditional practices. Any further extension of the Special Rapporteur's mandate should be mainly for the purpose of achieving that objective.

5. On the question of new studies, he noted that five new studies had been recommended while only two old ones had been completed, contrary to the principle that the number of new studies proposed should be in direct proportion to the number completed. Even if the Sub-Commission stuck to its target of carrying out only 13 studies at any given time, that target was still high and raised the question of the effectiveness of the assistance which the Special Rapporteurs could hope to obtain from the Centre for Human Rights, which lacked adequate human and financial resources. It also posed the problem of the in-depth analysis of such studies and the follow-up to the recommendations which they contained. Lastly, his delegation could see no objective reason for the Sub-Commission's proposal that certain studies should be published, while others would, apparently, be denied a wide circulation.

6. It was difficult to understand why the Commission was to consider the report of the Working Group on Contemporary Forms of Slavery (E/CN.4/Sub.2/1994/33) and not the report of the Working Group on Indigenous Populations (E/CN.4/Sub.2/1994/30), the more so since the draft United Nations declaration on the rights of indigenous peoples had been finalized. A similar anomaly existed in relation to the Declaration of Minimum Humanitarian Standards. Indeed, it was only by reading Sub-Commission resolution 1994/26 that one became aware that the Sub-Commission had decided to transmit the text of the Declaration to the Commission with a view to its further elaboration and eventual adoption. Given the importance of the various texts concerned, decisions concerning them should be clearly formulated and placed in the first chapter of the report containing the draft resolutions and draft decisions recommended to the Commission for adoption.

7. The large number of resolutions adopted by the Sub-Commission was evidence of the dynamism of that body. Their follow-up, however, raised certain problems in respect of the Commission's capacity to consider them all and to take appropriate decisions. Even if most of the resolutions had been adopted by the Sub-Commission itself and were not submitted to the Commission for formal approval, they nevertheless emanated from a subsidiary organ which must report to the Commission and for which the Commission had the ultimate responsibility. The Commission's role, therefore, could not be limited to the transmission of resolutions and decisions from the Sub-Commission to the Economic and Social Council, with its power of judgement coming into play only with regard to decisions which had financial implications.

8. As for the draft decisions and resolutions specifically submitted to the Commission, his delegation took the view that the proposal put forward in draft resolution I for the establishment of an inter-sessional working group needed to be carefully examined with a view to finding the most constructive arrangement for ensuring adequate follow-up on the question of prevention of discrimination and protection of minorities. With regard to draft resolution II, on human rights and the environment, consideration should also be given to the African proposal to appoint a special rapporteur to examine the crucial problem of the dumping of toxic and dangerous wastes.

9. Mr. TYSZKO (Poland) said that his Government supported the Sub-Commission's recommendation that the Commission should examine the text of the Declaration of Minimum Humanitarian Standards with a view to its further elaboration and eventual adoption. The promotion of a set of minimum human rights and humanitarian standards would address one of the greatest enemies of human rights, namely, their virtual legal inapplicability in situations where they were most desperately needed, namely, during internal disturbances. If, in such a situation, there were no symptoms of an armed conflict, then humanitarian law could not be applied. If, on the other hand, such a situation involved internal violence, the State was legally entitled to proclaim a state of emergency and thus to derogate from many of the provisions contained in the human rights treaties it had ratified.

10. His delegation deplored the fact that certain States asserted that specific human rights and humanitarian standards were not applicable to situations involving violence in their countries, but such assertions revealed the gaps and ambiguities in the law. The concept of minimum humanitarian standards might therefore be of use in the existing situation of uncertainty, since it was based on the requirement that those standards should apply at all times and in all situations, without any possible derogation, and would be binding on everyone, whether individuals, groups or authorities, including Governments, or their opponents.

11. The idea of such a declaration had already received the support of the Organization for Security and Cooperation in Europe (OSCE), the participating States of which had emphasized the potential significance of a declaration on minimum humanitarian standards applicable in all situations and declared their willingness to participate actively in its preparation within the framework of the United Nations. The Commission on Human Rights might, perhaps, help to promote the idea of a declaration, the point of which would be to clarify the applicability of the basic human rights standards and not to politicize the debate or result in the drafting of a new treaty requiring a new supervisory mechanism.

12. Mr. Dobrev (Bulgaria), Vice-Chairman, took the Chair.

13. Mr. WILLIS (Australia) said that, as a result of their history of dispossession, mistreatment and economic and social marginalization, the indigenous peoples faced particular human rights problems. While Governments had special responsibilities for the indigenous peoples within their territories, the United Nations system must also respond effectively to the concerns and aspirations of the 200 to 300 million indigenous people througnout the world.

14. One significant step which the United Nations could take was the early consideration and adoption of the draft declaration on the rights of indigenous peoples. Such a declaration, although not legally binding on any country, would give appropriate recognition to an area of human rights which had not received adequate attention from the United Nations system and would established standards towards which all Governments could work. To that end, his delegation strongly supported the establishment of an open-ended working group with the maximum participation of indigenous representatives, including

those non-governmental organizations which did not have consultative status with the Economic and Social Council. Such broad participation was essential for the credibility of the drafting process and of the final product.

15. The International Decade of the World's Indigenous People provided a framework for addressing issues of central concern to indigenous peoples over a longer period of time and at a deeper level than had been possible during the International Year of the World's Indigenous People. The programme of activities for the Decade should focus on practical ways to enable indigenous peoples to enjoy their human rights and to develop fully their distinct cultures and communities. The Decade should also foster new and equitable relationships between States and indigenous peoples based on mutual respect and understanding.

16. His delegation was keen to develop, in concert with others, proposals for the short-term programme of activities for 1995 and for the final comprehensive programme of action. Towards that end, it would propose a draft resolution for the Commission's consideration.

17. The establishment of a permanent forum in the United Nations system to consider the full range of issues of concern to indigenous peoples would be a further step towards enhancing the rights of those peoples. Indigenous peoples around the world should be given the opportunity to consider the options and develop their views on a permanent forum, so that a consensus could be reached in consultation with Governments and with the United Nations Secretariat. In that context, his delegation welcomed the proposal by the Sub-Commission that the Centre for Human Rights should organize a workshop on the possible establishment of a permanent forum, with the participation of Governments, indigenous organizations and independent experts.

18. As things stood, the only forum in the United Nations system in which indigenous organizations could freely and effectively express their views was the Working Group on Indigenous Populations. Pending any decision on its future in the context of the possible establishment of a permanent forum, the Working Group should continue to realize the full potential of its existing mandate by, inter alia, reviewing international and national standard-setting activities relevant to indigenous peoples.

19. On the question of where and how indigenous issues should be addressed at the current session of the Commission, his delegation took the view that it was no longer appropriate to consider such important subjects as the draft declaration on the rights of indigenous peoples, the International Decade of the World's Indigenous People and the establishment of a permanent forum under the agenda item of the Sub-Commission's report. Those issues were currently within the province of the Commission. Since no item on the Commission's current agenda covered them adequately, the time had come to create a new agenda item which gave them the status and prominence they deserved. Together with action on the particular indigenous issues before the Commission, the creation of a new agenda item would demonstrate to the indigenous peoples of the world that the Commission was serious about their human rights situation and about achieving social justice and equity for those who had been dispossessed and marginalized for so long.

20. Mr. Joon-Hee LEE (Republic of Korea) said that 1994 had provided the international community with a mixture of hope and despair in the field of human rights. Hope had come from the peaceful transition of South Africa to a democratic and non-racial republic. On the other hand, despair had emanated from the former Yugoslavia and Rwanda, where tragic and gross violations of human rights had been committed on a very large scale. The Commission must address itself to such cases of despair as a matter of urgency. His delegation welcomed the reports and recommendations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which applied directly to the protection of the human rights of the victims of those tragedies.

21. On the issue of impunity, resolutions 1994/34 and 1994/5, adopted at the previous session of the Sub-Commission, helped to strengthen the role of the Special Rapporteurs on the question of the impunity of perpetrators of violations of human rights. Those who committed, directed or facilitated such actions must be held accountable and his delegation fully supported the further study on the question of the impunity of perpetrators of such crimes as political genocide, ethnic cleansing and other serious violations of economic, social and cultural rights. It was also important for legitimate mechanisms to be developed for dealing with human rights violations committed by the State.

22. With regard to the plight of women and children referred to in the Sub-Commission's report, the Sub-Commission should continue its consideration of the issue of the rights of women and children. The situation in the former Yugoslavia and Rwanda had been stark reminders of how vulnerable women were to human rights violations. His delegation therefore considered that resolution 1994/30 on traditional practices affecting the health of women and children was a positive development in that area.

23. Lastly, his delegation supported the establishment of a working group on minorities as recommended by resolution 1994/4, on prevention of discrimination and protection of minorities, and joined other delegations in condemning terrorism.

24. Mr. NAITO (Japan) said that the Sub-Commission on Prevention of Discrimination and Protection of Minorities had been able to undertake pioneer studies and important initiatives largely because of its unique character as a body of independent and highly qualified experts who acted in a personal capacity and not as the representatives of particular States. In some cases, however, the Sub-Commission's proposals could not be adopted because they were impractical, unduly scrupulous or inefficiently organized. It was the Commission's responsibility to evaluate the Sub-Commission's work, and his delegation welcomed the continuing cooperation between the two bodies on the task of reforming the Sub-Commission.

25. His Government hoped that the guidelines concerning the organization of its work adopted by the Sub-Commission in 1992 and endorsed by the Commission in its resolution 1993/28 would be fully implemented. However, the Sub-Commission's recommendation for 15 studies, including 2 working papers, in

contrast to the 13 studies specified in the guidelines, had led his Government to conclude that the Sub-Commission was not respecting the guidelines or the Commission's resolution. It urged the Sub-Commission to reconsider the matter.

26. It also cautioned against the use of scarce resources for the organization of seminars to assist the special rapporteurs in their research. Reports should, in principle, be based on the special rapporteurs' own studies.

27. As for the Sub-Commission's recommendation to the Commission concerning the establishment of an open-ended working group to draft a third optional protocol to the International Covenant on Civil and Political Rights which would include article 9, paragraphs 3 and 4, thereof concerning the right to a fair trial and remedy in the list of rights that could not be violated during states of emergency, his delegation considered that, before any attempt was made to set new standards, Governments should be given enough time to examine thoroughly the desirability of such attempts so that the standards, once set, were effectively implemented. The Human Rights Committee had been somewhat hesitant in its attitude to the proposal. His delegation strongly believed that the proposed working group should include in its mandate consideration of the "desirability" of a third optional protocol.

28. There was a pressing need to reform human rights mechanisms and his delegation was sure that the Sub-Commission could play an active role in that area.

29. Mr. MUÑOZ-LEDO (Mexico) said that his Government was aware that careful attention to the problems of indigenous peoples was an essential prerequisite for current and future stability. Three United Nations initiatives designed to forge a new relationship with those peoples were the International Decade of the World's Indigenous People, the establishment of a permanent forum for indigenous people and the preparation of a declaration on the rights of indigenous peoples. It was not enough merely to commemorate indigenous history, traditions and cultural institutions. A conscious effort was needed to safeguard the dignity and promote the development of indigenous peoples, who were invariably the poorest and most vulnerable sectors of the population.

30. Mexico was not shirking its responsibility and recognized the urgency not only of responding to the immediate demands of indigenous communities but also of addressing the underlying causes of their legitimate complaints, which were extreme poverty, lack of opportunity and absence of democracy. The Government had set up a National Commission for Integrated Development and Social Justice to formulate policies and coordinate the action of the federal authorities on their behalf. Work had begun on regulatory legislation under article 4 of the Constitution to protect and promote the development of indigenous languages, culture, resources and specific forms of social organization and to ensure access to the State's legal machinery. Mexico was one of the few countries to have ratified ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).

31. The rights of indigenous peoples should be recognized not only as individual human rights but also as collective and social rights. His delegation considered it extremely important that the programme of action for

the International Decade of the World's Indigenous People should promote specific activities on their behalf that would yield concrete results. It should provide for international cooperation to fund development projects designed by the indigenous peoples themselves. The themes for the Decade should be biennial, so as to allow for deeper reflection, and should focus on human rights, the environment, education and health, as specified by General Assembly resolution 48/163.

32. His delegation wholeheartedly supported the request of the indigenous peoples for the establishment of a permanent forum in the United Nations where their representatives could express their views on matters affecting them.

33. The drafting of a declaration on the rights of indigenous peoples was undoubtedly one of the most relevant tasks to be addressed by the Commission, and his delegation therefore supported the establishment of an inter-sessional working group, which should ensure a broad representation of the indigenous organizations in accordance with the procedures applicable to the Commission and assess the impact of the implementation of the Declaration and its relationship with existing agreements between indigenous communities and States.

34. Mr. BOITCHENKO (Russian Federation) said that one of the most important achievements of the Sub-Commission and its Working Group in the previous year had been the completion of a draft United Nations declaration on the rights of indigenous peoples, which had been prepared with the active participation of the indigenous peoples themselves. His delegation urged the Commission to establish an open-ended working group to consider that draft declaration.

35. The delay in specifying the place to be assigned to questions concerning the indigenous peoples in the Commission's agenda was deplorable. His delegation considered that such a multifaceted and interdisciplinary set of questions deserved to be treated as a separate agenda item.

36. He commended the expertise and innovative approaches of the Sub-Commission in its studies and reports, in particular the report on the right to a fair trial (E/CN.4/Sub.2/1994/24) and that on human rights and the environment (E/CN.4/Sub.2/1994/9). However, it fully agreed with the views expressed by the delegation of Brazil concerning the latter study.

37. His delegation supported the idea of a study on the recognition of gross and large-scale violations of human rights as an international crime. Another extremely interesting subject was the implications for the enjoyment of human rights of humanitarian actions. Despite certain ambiguities and a lack of uniformity, the Sub-Commission's report on the subject brought to light the complexity and contradictory nature of the current situation in that area.

38. His delegation supported the Sub-Commission's proposal for the establishment of a pre-sessional working group on minorities.

39. With regard to the Sub-Commission's working methods, further improvements were necessary to comply with previous resolutions, including Sub-Commission resolution 1992/8. It was essential to strike a reasonable balance between the discussion of country situations and thematic questions, with a view inter alia to avoiding duplication of the work of the Commission.

40. Mr. MIRANDA (Nicaragua), speaking first on the subject of discrimination in the context of human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS), said that the predominant reaction to the disease in many countries was one of rejection of the victims. Some economically powerful countries went so far as to deny them access to their territory in violation of the basic right of freedom of movement recognized in the Universal Declaration of Human Rights. Such isolationist attitudes were the very opposite to what was required in order to conduct an all-out war against AIDS.

41. The World Health Organization (WHO) had predicted that 20 million people would be infected by the end of the century. It was only through close international cooperation, particularly with the developing countries, that the pandemic could be brought under control. His Government awaited with impatience the launching of the joint and cosponsored United Nations programme on 1 January 1996, in the hope that it would ensure global coordination of policies, approaches and funding, in accordance with resolution EB 93.R5 of the Executive Board of WHO, and ongoing technological, scientific and human assistance.

42. As matters stood, campaigns of prevention were the only defence against AIDS and discriminatory attitudes, but such campaigns were virtually non-existent in many countries, including Nicaragua. The result was incomprehension and an irrational fear of those infected, leading in turn to discrimination.

43. In view of the progress achieved through the Paris Declaration of 1 December 1994, his delegation called on the international community to draw up an international instrument to protect the rights of people with HIV and AIDS.

44. Turning to the question of indigenous peoples, he said that his delegation commended the Sub-Commission's Working Group on Indigenous Populations, which had prepared the draft United Nations declaration of the rights of indigenous peoples on the basis of the views of Governments, indigenous communities and non-governmental organizations. It supported the establishment of an open-ended inter-sessional working group to continue the drafting process. Care should be taken to ensure that the final version was acceptable to the international community, and that its provisions did not undermine the sovereignty and territorial integrity of States.

45. In 1987, Nicaragua had promulgated a Statute of Autonomy based on the Constitution, under which the communities of the Atlantic coast were guaranteed full participation in local and regional administration. In addition to the recognition and strengthening of ethnic identity, it recognized the right of ownership of community land and introduced the possibility of legislative initiatives in respect of natural resources.

46. His Government had set up a National Committee for the International Decade of the World's Indigenous People (CONADIPI) whose members included ministers, representatives of indigenous organizations, regional governors and a member of the National Assembly's Commission on Ethnic Affairs. It was responsible for implementing a programme of action for the Decade; proposing national land, health, education, employment and technical-assistance policies and monitoring their implementation; promoting coordination between the Government, indigenous peoples, national and international non-governmental organizations and international institutions in addressing problems relating to human rights, environment and development; publishing scientific and literary material on the country's indigenous peoples with the assistance of the Nicaraguan Government and other Governments and/or international organizations; and administering technical and financial resources.

47. The Decade was also an excellent opportunity to mobilize international cooperation with a view to improving economic and social conditions for the indigenous peoples throughout the world. In the case of Nicaragua, given the role played by the indigenous peoples in national reconciliation, support for their socio-economic development plans and programmes would help to consolidate the peace process, political and economic stability and democracy.

48. Mr. QUAYES (Bangladesh) said he hoped that, with the draft declaration on the rights of indigenous peoples under consideration by the Commission, the member States would give their utmost support to the genuine and legitimate concerns of the indigenous peoples. Although the population of his country consisted entirely of indigenous peoples, his Government would continue to lend its sincere and humble support to the promotion and protection of the human rights of "indigenous peoples" elsewhere.

49. It was a matter of concern, however, to the people of Asia - over half the population of the world - that various persons and groups were laying claim to the status of "indigenous people" without any regard to history, anthropology or culture. Such claims were proliferating in the absence of an agreed definition for the term, while the wholly subjective concept of "self-identification" was being promoted. Such a chaotic and self-defeating situation should be avoided.

50. As his Government had always maintained, the entire population of Bangladesh was indigenous since its people had not, historically speaking, arrived from abroad or displaced any other population. Yet, as a result of action by the Centre for Human Rights, Bangladeshis were about to become de-indigenized. The Centre had on several occasions produced documents, without consulting the Member States, which in effect promoted the claims of some group or non-governmental organization. Such occurrences had been brought to the attention of the Centre, with a request for urgent action to correct errors and prevent any recurrence, but to no avail. Most recently, a map published by the United Nations International Drug Control Programme, indicating the "location" of indigenous peoples around the world, marked one such location as "South Asia", while another - in the general region of Bangladesh - was marked "Chittagong Hill Tracts People".

51. That was more than a mere oversight. In spite of Bangladesh being part of South Asia, the map specified a particular spot, whereas the other markings on the map referred to general locations. The whole publication had apparently been approved by the Centre, despite the fact that, when the map had appeared previously in 1993, protests from Bangladesh and other countries of the region had led to its withdrawal. At that time, the Centre had also propelled a so-called representative of the "indigenous people of Bangladesh" - a person who did not even live in Bangladesh - on to the world stage.

52. Such arbitrary acts were prejudicial to the fundamental interests of Member States. An organ of the United Nations had, consciously or unconsciously, become a party to public disinformation and to an incrimination campaign against a Member State. The Centre had no valid authority to designate populations as indigenous or otherwise. The United Nations Secretariat was supposed to be manned by people of high intelligence, integrity and impartiality. He therefore trusted that the gross errors mentioned above would be rectified, that those responsible would be identified and that the necessary deterrent measures would be applied to prevent such errors recurring.

53. Mr. VERGNE SABOIA (Brazil) said that his country attached particular importance to the discussion of indigenous issues by the Commission at its current session: it was not only the first year of the International Decade of the World's Indigenous People, but the Commission also had before it a proposal regarding the possible establishment of a permanent forum and the draft declaration on the rights of indigenous peoples.

54. With regard to the last of those issues, the first question that arose was how the Commission should proceed, following the wide consultations carried out by the Sub-Commission with indigenous peoples and with Governments. Most of the views expressed by the indigenous observers had been reflected in the draft. The time had come, however, to engage in an effective negotiating effort to strike a balance between what was expected by some and what was acceptable to the international community. The produce of the negotiation would have to mobilize enough consensus to be adopted by the General Assembly without a vote if it was to enjoy the moral authority required for its universal acceptance and enforcement.

55. Governments should therefore ensure that the negotiations took account of all the interests involved, and more particularly those of the indigenous peoples themselves. Wide and participatory consultations should take place in each country individually, so that government delegates were instructed to convey national positions truly reflecting each country's individual circumstances. It was to be hoped that some of the delegations would include indigenous delegates.

56. His delegation had played an active part in the Working Group on Indigenous Populations. He paid tribute to the Chairperson-Rapporteur of the Working Group for doing her utmost to incorporate the main aspirations of indigenous organizations into the draft. That level of participation should be maintained. The inter-sessional working group of the Commission should thus hold public hearings with the participation of indigenous observers.

57. His Government would, however, deem it inappropriate to overrule the directives of the Economic and Social Council on the participation of non-governmental organizations in its subsidiary bodies. The working group should operate under the normal rules of procedure. He therefore suggested that any interested non-governmental indigenous organization should seek consultative status with the Council, particularly on the roster. The question of the participation by indigenous groups in the drafting process should not, however, stand in the way of starting the negotiations immediately.

58. Ms. KUNADI (India), having complimented the Working Group on Indigenous Populations and its Chairperson-Rapporteur on having elaborated the text of the draft declaration on indigenous peoples, which constituted a solid foundation for addressing the problems of indigenous peoples and protecting their human rights, said that the Commission would, however, have to consider what precisely was meant by the term "indigenous people". Her delegation believed that it should apply only to specific populations in certain parts of the world.

59. It was not, for example, applicable to India - or indeed much of Asia or Africa - since the entire populations of those areas had been living on their lands for several millennia and any distinction between indigenous and non-indigenous would be a spurious one. That being so, she was concerned that, before the States had debated the matter, the Centre for Human Rights had taken it upon itself to designate and decide the identity of indigenous peoples, which was clearly outside its mandate. A clear distinction should be made between areas where cultures had been wiped out to make way for others and areas where cultures had been progressively assimilated with others over the centuries. India was proud to be able to identify still tribal groups that had been in existence over 2,500 years previously.

60. It was important that the discussion on the draft declaration should not be conducted in a confrontational manner between indigenous groups and Governments. Nor should anything be done that might have a negative impact on the life of indigenous peoples with regard to the main elements of the draft declaration, such as territorial arrangements, questions of sovereignty over natural resources and the application of legal systems.

61. There were various views on how territorial arrangements should be envisaged. The degree of autonomy that could be enjoyed by indigenous peoples was directly connected with what was necessary to maintain their beliefs, preserve their customs and traditions and at the same time facilitate their involvement in all aspects of nation-building. Such involvement could best be achieved by promoting their rights within a genuine democratic society through affirmative action.

62. The Indian Constitution, recognizing that social disabilities might impair the full enjoyment of basic human rights, deliberately provided for positive discrimination and affirmative action in favour of those who could not exercise their human rights unaided. Effective representation of the socially and economically deprived was ensured both in legislatures and in public services. In states where Scheduled Tribes were in the majority, no person who was not a member of a Scheduled Tribe was eligible for election to

the state and national legislature. The National Commission for Scheduled Castes and Scheduled Tribes had statutory powers to monitor and protect their rights. Poverty alleviation and development programmes, including literacy programmes, scholarships for underprivileged students and employment generation schemes were being implemented to strengthen their economic and social status.

63. Ms. ANDREEVSKA (Observer for The Former Yugoslav Republic of Macedonia) said that her country was committed to full respect for the human rights and freedoms guaranteed under international treaties, including those of minorities. Such treaties were incorporated into its Constitution and other legislation. Noting that the Organization for Security and Cooperation in Europe (OSCE) had constantly insisted on the principle of non-discrimination, she shared the prevailing opinion that the most significant document pertaining to the rights of national minorities was the Final Document of the Copenhagen Meeting of the CSCE (cited in A/45/859), which had mentioned for the first time that affiliation to a national minority was a matter of personal choice.

64. States were obliged to safeguard the ethnic, cultural, linguistic and religious identity of national minorities in their territories. Unfortunately, some States parties to international treaties, including participants in the creation of the OSCE documents, frequently breached in various ways the commitments contained therein. They pointed out human rights violations in other States, but rejected criticism of their own actions as being interference in their internal affairs.

65. She welcomed the fact that the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities was being increasingly implemented. The question was how further progress was to be achieved. She suggested that the Centre for Human Rights could prepare a project on the minorities of the world which would find out, inter alia, what minorities expected from the United Nations. The time might also have come to start work on the preparation of a United Nations convention on minorities, following the results achieved in that area at the European level. Her delegation also supported the idea that the United Nations should have a high commissioner for national minorities; it did not believe that such a post would interfere with the work of the High Commissioner for Human Rights.

66. There was no question but that States should respect their commitments under international treaties regulating human and minority rights. Some of those commitments were incorporated in the provisions of the Charter of the United Nations and the Universal Declaration of Human Rights, thus becoming part of general international law and binding not only all States but also parties to internal litigation. The Republic of Macedonia maintained that all minorities were entitled to be recognized and to enjoy all the rights and guarantees recognized under international law.

67. Rights could not, however, be enjoyed selfishly and irresponsibly. Certain rights had, therefore, to be subject to some limitations in order to protect the interests of other people and of the entire social community. That should not, however, be a pretext for abuse by totalitarian and autocratic States, which usually wished to identify themselves with the

objectives of the dominant community and on its behalf to limit or abolish all rights they considered unsuitable. She recalled that the Universal Declaration (art. 29, para. 2) recognized any such limitations "solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society". Human rights and democracy were thus mutually dependent.

68. Mr. LARSEN (Observer for Denmark), speaking on behalf of the Nordic countries, said that, while they welcomed the establishment of the new agenda sub-item on "Indigenous issues", the Nordic countries would prefer a new, separate agenda item on the subject, given that the International Decade of the World's Indigenous People was starting, that the Commission was considering a permanent forum and that the draft declaration on the rights of indigenous peoples had been transmitted by the Sub-Commission.

69. Looking back to the first meeting of the Working Group on Indigenous Populations in 1982, he thought it was clear that a remarkable process of growing awareness of indigenous issues had occurred, both through the active participation of the indigenous peoples themselves and thanks to growing support by the general public in many countries around the world. He was confident, therefore, that many problems relating to the participation by indigenous peoples in the United Nations system would be solved in the foreseeable future.

70. The draft declaration, after years of tireless efforts by the Working Group and its Chairperson-Rapporteur, had provided a focus for the active participation of indigenous peoples; the Working Group had developed impressively into an assembly of some 800 indigenous representatives. The draft was a very comprehensively elaborated document and should be given attention accordingly. The Nordic countries therefore endorsed the idea of an open-ended inter-sessional working group to review the draft and hoped that it would be able to finalize its consideration at the earliest possible date.

71. As it stood, the draft declaration was an important achievement, not least because it had been written in close and continuous consultation with the indigenous peoples and hence truly reflected their aspirations. Had that not been so, it would have been of interest neither to Governments nor to the indigenous peoples. The latter should therefore continue to be actively involved in the work of reviewing the draft: it would be most practical if the new working group met either immediately before or immediately after the sessions of the Working Group on Indigenous Populations. Indigenous peoples and organizations should be able to participate fully in the discussions, regardless of their consultative status with the Economic and Social Council.

72. The idea of establishing a permanent forum for indigenous people in the United Nations system, a recommendation contained in the Vienna Declaration and Programme of Action, deserved careful consideration. He urged the parties concerned to continue negotiations on the matter and hoped that the Centre for Human Rights would take further steps to facilitate that process.

73. Efforts to establish a permanent forum for indigenous people and to adopt the declaration on their rights would constitute two major aspects of the International Decade of the World's Indigenous People. The Decade would also inspire a wide variety of programmes and projects at the national and international levels. Such activities must be properly planned and coordinated and supported by adequate resources.

74. Annual technical meetings should be held to coordinate activities, monitor progress and exchange information. Consideration should be given to ways in which technical meetings could be made even more effective. He supported the call for the allocation of more regular budget resources to an indigenous peoples unit of the Centre for Human Rights and reiterated the willingness of the Governments he represented to contribute to the Voluntary Fund for Indigenous Populations. He hoped that the Centre for Human Rights would, as it had done during the International Year of the World's Indigenous People, include qualified indigenous experts on its staff. The Centre should also endeavour to broaden its donor base and seek income from non-traditional sources.

75. The General Assembly had decided that the International Day of Indigenous People would be observed every year of the Decade on 9 August. That event would provide a symbolic reminder of the willingness of the international community to take political and practical action to improve the conditions of indigenous peoples throughout the world.

76. Mr. LUDBROOK (Observer for New Zealand) said that issues affecting indigenous peoples were of great importance to his country. His delegation thus welcomed the increasing international recognition of the specific needs and perspectives of indigenous peoples and the importance of helping them to maintain their identity and culture.

77. While welcoming the decision to include a separate sub-item on indigenous issues under item 19 of the Commission's agenda, his delegation was still convinced that indigenous issues should be a separate agenda item and hoped that agreement in that regard could be reached before the Commission's next session. The work being carried out in the area of indigenous issues was relevant to a broad range of parties, governmental and non-governmental alike. Moreover, some of the issues went beyond those being discussed in the Working Group on Indigenous Populations of the Sub-Commission.

78. It was to be hoped that the International Decade of the World's Indigenous People would enhance the status of indigenous peoples worldwide and contribute lasting solutions to the problems they faced. As requested by the General Assembly, the Commission should examine the short-term programme of action for the Decade with a view to adjusting or supplementing it. One useful way to plan for the Decade would be through a second technical meeting. In that connection, information on progress made by United Nations agencies since the first technical meeting would be welcome. Those agencies should include action on indigenous issues within their regular programmes and budgets.

79. His Government was in favour of the establishment of a unit for indigenous issues within the Centre for Human Rights.

80. In New Zealand, the first year of the Decade would be *Te Tau O Te Reo Maori*, the year of the Maori language. His country's activities during the Decade would help to promote a wider appreciation and awareness of the special place of Maori in New Zealand society. At the end of 1994, his Government had issued its Treaty of Waitangi settlement proposals, which were designed to enhance a fair and durable settlement of the Treaty claims. Consultations on the proposal would be the broadest exercise of its kind between the Treaty partners, the New Zealand Government and the indigenous Maori people.

81. The draft United Nations declaration on the rights of indigenous peoples, the result of thorough work on the part of the members of the Sub-Commission's Working Group on Indigenous Populations, was currently before Governments for their comments. His delegation firmly supported the development and adoption of an appropriate declaration, which would take its place among the body of international human rights instruments.

82. His Government supported the proposal that the Commission on Human Rights should set up an open-ended ad hoc working group to consider the draft declaration. Indigenous peoples' representatives should be able to participate in that working group on equal footing with non-governmental organizations, without regard to consultative status with the Economic and Social Council. The continued participation of the indigenous peoples in the negotiations on the draft declaration was integral to the nature and spirit of the text, which sought to give due consideration to their distinct perspectives. It would also serve as recognition of the contribution of those peoples to the elaboration of the text.

83. His delegation endorsed the Sub-Commission's recommendation that a workshop should be organized to consider the issue of establishing a permanent forum for indigenous people. Simultaneously, consideration should be given to practical short-term measures. More particularly, his delegation was in favour of broadening the membership of the Working Group on Indigenous Populations to include five experts from indigenous groups.

84. His Government would be contributing actively to the success of the International Decade and looked forward to the early adoption by the United Nations of an appropriate declaration on the rights of indigenous peoples.

85. Mr. QUISPE (Observer for Bolivia) said that his Government applauded the efforts being made to secure a more dignified and just future for the world's indigenous peoples. Indeed, resolution of that problem was vital to Latin America's prospects for democracy, solidarity and full participation in the twenty-first century.

86. Despite such important milestones as ILO Convention 169 and various UNESCO resolutions, greater efforts were needed to rescue indigenous peoples from their marginal status. The International Year of the World's Indigenous People had helped raise awareness of the issues and had demonstrated the willingness of the international community to take action on them.

87. The profound social and economic changes under way in his country had produced important benefits for the indigenous peoples. A highly significant event was the election of a member of the Aymara people as Vice-President of the Republic, which demonstrated the country's respect for the traditions, cultures and rights of the indigenous peoples.

88. His Government attached high priority to the establishment of mechanisms to integrate the indigenous peoples into national life, in terms of both rights and responsibilities. It had launched an educational reform programme for rural, migrant and indigenous populations, whereby children were educated in their native languages but also taught Spanish. Children trained in that bilingual environment would become bridges between the country's various cultures and would be more easily integrated into a pluricultural society.

89. A Popular Participation Act, approved in 1994, was the first explicit recognition of the indigenous peoples and grass-roots organizations as legitimate participants in national development and integration. The Act recognized the legal status of the indigenous people and consolidated their participation in the political and economic life of the country.

90. Under the Constitution, as modified in 1994, the social, economic and cultural rights of the indigenous peoples were recognized, respected and protected under the law and their rights to use and develop their natural resources and to preserve their values and traditions were guaranteed.

91. At the international level, his Government had been the main driving force behind the establishment of the development fund for the indigenous peoples of Latin America and the Caribbean. It had also worked actively to ensure that the Declaration of Principles of the United Nations Conference on Environment and Development had mentioned respect for indigenous people.

92. To prepare for the International Decade of the World's Indigenous People, his Government had sponsored, in June 1994 in the city of Cochobamba, a meeting of Latin American Governments, grass-roots and international organizations and cooperation agencies. The meeting had issued the Cochobamba Declaration containing recommendations which might serve as the basis for future work on indigenous issues.

93. His Government wished to reaffirm its commitment to work towards the realization of the objectives of the International Decade. The United Nations should ensure that the activities of the Decade were underpinned by the necessary resources.

94. Mr. SHAMSHUR (Observer for the Ukraine) said that, to a considerable extent, the Sub-Commission on Prevention of Discrimination and Protection of Minorities had carried out its task of assessing human rights situations throughout the world and providing expert advice to other United Nations bodies. Most recently, it had elaborated the draft United Nations declaration on the rights of indigenous people which, in his delegation's view, should be adopted without delay.

95. The Sub-Commission had been making significant efforts to meet the complex challenge of preventing discrimination and protecting minority rights. Nevertheless, its activities were still in need of reform, including rationalization of its agenda and better coordination with the work of the Commission on Human Rights. Persistent overlapping of the activities of the two bodies and the politicization of certain questions had diverted the attention of the Sub-Commission from the issues to which it should be giving priority, including an in-depth analysis of new phenomena in the field of human rights.

96. The Sub-Commission had failed thus far to halt the proliferation of its agenda items and studies. Yet, despite the very title of the organ, the protection of minorities was underrepresented in that list. Consequently, he reiterated his support for the establishment by the Sub-Commission of an inter-sessional working group to examine constructive solutions to situations involving minorities.

97. Mr. WILLE (Observer for Norway), speaking on behalf of the Nordic countries, said that an increasingly large proportion of serious and systematic violations of human rights were taking place in situations of internal violence or public emergency. The violent methods used in such situations were causing extensive suffering to civilians and other innocent victims.

98. It was widely acknowledged that situations of internal strife posed serious problems for the protection of human rights and fundamental freedoms. Humanitarian law did not apply in cases where there was no armed conflict. At the same time, internal violence sometimes led to the declaration of a state of emergency, which meant that the authorities were able to derogate from the provisions of many of the principal human rights instruments. The International Covenant on Civil and Political Rights provided for derogation, under particular circumstances, from a number of important guarantees including due process, the humane treatment of detainees, the right to liberty of movement and the right to freedom of opinion.

99. He thus welcomed resolution 1994/26 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in which it had decided to transmit to the Commission on Human Rights the Declaration of Minimum Humanitarian Standards, adopted by a group of experts at a meeting in Turku, Finland, in December 1990. Consideration of that text would provide the Commission with an opportunity to study the question of the protection of human rights in situations of public emergency or internal violence.

100. The number of absolute rights, or rights from which there could be no derogation, even in a state of emergency, was rather limited. It should be stressed in that connection that a state of emergency could be declared only when the situation threatened the life of the nation and the act of declaring a state of emergency was subject to strict observance of substantive and procedural requirements.

101. A number of mechanisms had been set up to deal with the special situation of the state of emergency. A Special Rapporteur had, for several years, been submitting annual reports to the Sub-Commission on states of emergency

throughout the world. States participating in the Organization for Security and Cooperation in Europe (OSCE) had made commitments relating to minimum safeguards during public emergencies.

102. The Declaration of Minimum Humanitarian Standards contained substantive standards of a general nature which were not linked to any particular existing international instrument. The text combined elements of human rights law and international law and was, in principle, universally applicable. It addressed the basic needs of all persons and provided a helpful set of standards aimed at securing better protection for individuals in all circumstances. In order to prevent violations of human rights during situations of internal violence or states of emergency, States needed precise and effective national legislation. The intention was not, therefore, to create a new legally binding instrument but to formulate an improved frame of reference of minimum humanitarian standards.

103. Some delegations were preparing a draft resolution recommending that the Declaration should be transmitted to Governments and intergovernmental and non-governmental organizations for their comments and that the matter should be discussed by the Commission at its next session.

104. The United Nations should assume a more active role in the promotion and protection of human rights during situations of public emergency or internal violence. Through its programme of advisory services, it could assist the States in preparing legislation in that area.

105. Mr. CANGELARIS (Observer for Greece), speaking in exercise of the right of reply, said that, for the benefit of the representative of The Former Yugoslav Republic of Macedonia who had obviously missed the point of a previous statement by his delegation in exercise of its right of reply, he wished to recall Security Council resolution 817 (1993), according to which the country which she represented was to be provisionally referred to for all purposes within the United Nations as The Former Yugoslav Republic of Macedonia.

The meeting rose at 5.41 p.m.